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No. 272] NEW DELHI, TUESDAY, MAY 28, 1957/JYAISTHA 7, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 22nd May 1957.

S.R.O. 1738.—In pursuance of the provisions of sub-section (1) of section 88 of the Representation of the People Act, 1951, the Election Commission hereby publishes a copy of the Election Petition No. 444 of 1957, presented to the Commission on the 3rd May, 1957, under section 81 of the said Act, by Shri Digambar Rao Bindu son of Govind Rao Bindu, resident of Nanded City, Bombay State, calling in question the election to the House of the People from the Nanded Parliamentary constituency of that House of Shri Hari Har Sonule son of Nagorao, resident of Hatgaon, District Nanded, State of Bombay.

Received by Registered Post this the third day of May, one thousand nine hundred and fifty seven.

(Sd.) A. KRISHNASWAMY AIYANGAR, Secy.

Election Commissioner, India.
3-5-57.

BEFORE THE ELECTION COMMISSION, NEW DELHI

ELECTION PETITION NO. 444 OF 1957.

Election Petition under Chapter II Part 6 of the Representation of People Act, 1951 (Act No. 43 of 1951), calling in question election for the Parliamentary Double Member constituency of Nanded, Nanded District, Bombay State.

Between.

Shri Digambar Rao Bindu son of Govind Rao Bindu, Aged 60 years resident of Nanded City, a contesting candidate for the General Seat from Nanded Parliamentary Constituency in the State of Bombay.—Petitioner.

And

1. Shri Dev Rao Kamble, son of Namdevrao, aged 40 years, Scheduled Caste, residing at Pathri, Dist. Parbhani, a returned candidate for the General seat.

2. Shri Hari Har Sonule son of Nagorao, aged 32 years, occupation agriculturist, resident of Hatgaon, Dist. Nanded, State of Bombay, a returned candidate for the Reserved Seat.

3. Shri Vijendra Kabra son of aged about 35 years, resident of Aurangabad, State of Bombay.—Respondents.

The petitioner begs to submit as follows:

1. The Parliamentary Constituency of Nanded in the Bombay State is a double-member constituency one seat of which is reserved for the scheduled castes and the other seat is not so reserved.

2. In the 1957 general elections, there were four candidates, who contested the elections. Of the four candidates, respondents Nos. 1 and 2 declared themselves members of the scheduled caste and contested the election on that basis for the reserved seat.

3. The polling in the aforesaid constituency took place between 2nd March, 1957 and 11th March, 1957 and the votes polled by these candidates were as follows:

Reserved Seat 1. Shri Dev Rao Kamble, Respondent No. 1—177268.

2. Shri Hari Har Sonule, Respondent No. 2—149663.

General Seat 1. Shri Digamber Rao Bindu, Petitioner—146686.

2. Shri Vijendra Kabra—132075.

4. The result of the election was declared on 23rd March 1957 by the Returning Officer. Respondent No. 1 was declared elected for the reserved seat and respondent No. 2 for the general seat.

5. The petitioner submits that the declaration by the Returning Officer that Shri Hari Har Sonule, respondent No. 2 has been elected for the general seat, was and is illegal and invalid as is evident from the facts, circumstances and submissions made thereafter.

6. Shri Hari Har Sonule, respondent No. 2, was nominated as a candidate for the election to fill the reserved seat and he presented his nomination paper for the reserved seat and paid the concession deposit of Rs. 250/- by claiming himself to be a member of the scheduled caste, and as such he contested for the reserved seat. He was set up for the reserved seat by the Samyukta Maharashtra Samiti and was opposed by Shri Dev Rao Kamble, respondent No. 1, who was nominated on behalf of the Congress Party to contest only for the reserved seat.

7. The mandate of the Congress Party was that the petitioner should contest only for the general seat and Dev Rao Kamble should contest for the reserved seat. Similarly, the mandate of the Samyukta Maharashtra Samiti was that Shri Hari Har Sonule, respondent No. 1, should contest for the reserved seat only and Shri Vijendra Kabra respondent No. 3 should contest for the general seat only. There was clearly no intention on the part of the candidates or the political parties setting up these candidates that the candidates set up by the two parties should be rivals to each other for the general seat. The nomination papers filed in support of respective candidates read in the context of the mandate of the parties and the appeal to the electorate made by them, it is absolutely clear that the first and the second respondents contested only for the reserved seat and that the petitioner and respondent No. 3 contested only for the general seat. Respondents Nos. 1 and 2 waived their right, if any, to contest for the general seat as any attempt to do so would entail disciplinary action against them at the instance of their parties besides alienating the co-operation of their own party candidates.

8. The ballot box allotted to the contesting congress candidate standing for the reserved seat referred to in para 3 above, was distinguished by a black circle round his symbol, while the ballot box of the other reserved seat candidate, that is, respondent No. 2, also bore a specific symbol allotted to him. The ballot boxes of the candidates for the general seats mentioned in para 3 above bore their usual symbols. It would be thus evident that there was a clear distinction made between the reserved seat candidates from the general seat candidates so that there could be no doubt in the minds of the voters or of any one concerned about the fact that the candidates standing for the reserved seat were not contesting for the general seat and vice versa. The electorate when exercising their franchise in respect of the general seat had in mind the relative merits of the candidates in respect of that seat and voted accordingly. In doing so, they did not take into consideration, nor were they required to do so by any law, the relative merits of the candidates standing for the reserved seat as regards their fitness to fill the general seat. Respondents Nos. 1 and 2 never sought the suffrage of the voter in respect of the general or non-reserved seat and the voters had no opportunity of judging them for the said seat.

9. The result of the election of the returned candidate, Shri Hari Har Sonule to the general seat has been materially affected by non-compliance of the provisions of the Representation of the People Act of 1951, and the Rules framed thereunder *inter alia*, in that

(a) the returned candidate has been declared elected for the general seat without filing nomination paper for the general seat as required by S.32 of the said Act;

(b) S.54 of the Act does not authorise grouping of scheduled caste candidates who never filed nominations nor contested for the general seat for purposes of determining who has secured the largest number of votes for the general seat. If that Section be held to so provide, it is *ultra vires* of the Constitution of India, and void and illegal.

10. It is illegal to take into account or compare the votes secured by the respondent No. 2 for the reserved seat as against the votes secured by the petitioner for the general seat. S. 54, Cl. (4) of the Act contemplates comparison of votes secured by the *Contesting candidates* to a seat, but not the votes polled by non-contestants to that seat in an election to a different seat. It envisages a case, which arises here, of a candidate contesting only for the reserved seat but not for the general seat.

11. The first respondent cannot by any stretch of language or imagination be brought within the words "remaining candidates" used in S.54, Cl. (4) of the Act. This sub-section cannot be used for declaring the defeated candidate for the reserved seat as having been elected over the head of the successful candidate for the general seat. The illustration to the sub-section is misleading, *ultra vires* and illegal as it goes against not only the sub-section itself, but against the provisions of the Constitution. This wrong illustration is sought to be applied to this case and the declaration of the result is based completely on the wrong illustration and not on the main Section. The illustration, therefore, is void.

12. The result of election in so far as it concerns the returned candidate, Shri Hari Har Sonule, respondent No. 2, has been further materially affected by non-compliance of the provisions of the Constitution of India, namely, Part III of the Constitution, and in particular Articles 14 and 15 thereof.

(a) The Scheduled castes candidate has been given not only the privileges incidental to contesting a reserved seat, but also advantages in respect of the general seat over the candidates who could contest for the general seat only. Thus it denies equality before the law and equal protection of law to a citizen who can contest only for the general seat. The petitioner, who was and is a citizen has been illegally and unfairly, unreasonably and unconstitutionally discriminated against.

(b) Parliament was not competent to make any other provision of law under Art. 327 or any other provision of the Constitution, which has the effect as stated above, and the Representation of the People Act, 1951 and the Rules under which the declaration of the result was made as aforesaid, are *ultra vires* and void. They are, therefore, of no legal effect.

(c) in any event, S. 54, Cl. (4) was not enacted according to the provisions of the Constitution, and was beyond the legislative competence of Parliament and so in conflict with the constitutional provisions *inter alia* laid down in Articles 326, 327 and 330 of the Constitution.

(d) The illustration given under S.54 (4) being contrary to the said provisions of S.54 (4) and also contravening the provisions of the said Act and the Constitution, is *ultra vires* and of no legal consequence.

(e) S.54 of the said Act is also inconsistent with the earlier provisions of the Act in general, and in particular S.38, R.11 of the conduct of Election and Election Petition Rules. It is clear that S.54 is repugnant to the other provisions of the Act and that of the provisions of the constitution.

13. The result of the election of the returned candidate, Shri Hari Har Sonule, respondent No. 2 has been further materially affected on account of the following:

(i) That under S.63 of the Representation of the People Act, 1951, in a plural member constituency every elector has as many votes as there are members to be elected. But the elector cannot cast more than one vote to any one candidate. It is also mentioned in the said Section that if an elector gives more than one vote to any one candidate in contravention of the provisions of the said Section, then at the time of counting of votes no more than one of the votes given by him to such a candidate shall be taken into account and all the other votes given by him to such candidate shall be rejected as void. In the light of this provision it is erroneous on the part of the

Returning Officer to have declared both the votes cast in favour of the petitioner as void. All such votes, which ought to have been counted, should therefore, be added to the votes of the petitioner.

(ii) In the light of S.63 of the said Act, it was incumbent on the Returning Officer to arrange for separate polling compartments, one for the general seat, and the other for the reserved seat. It was also incumbent on the Presiding Officers to issue the ballot papers separately, one for the general seat and after having cast the ballot paper for the general seat, it is only then that the second ballot paper for the Reserved seat should have been issued or vice versa. In all the polling stations no such separate polling compartments were provided for the general seat and the reserved seat, and in no polling station the method of issuing separate ballot papers one after the other was followed with the consequence that the voters who were given both the general as well as reserved seat ballot papers simultaneously and were made to go into a compartment where all the ballot boxes relating to the general seat as well as the reserved seat were placed together, were naturally confused and thousands of the voters were misled by this arrangement and they put both their votes either in the ballot box of the petitioner or in the ballot boxes of the respondents.

Keeping in view the votes which the petitioner got in this manner as has been stated above, one vote atleast ought to have been counted under S.63 as far as the petitioner is concerned. But the Returning Officer failed to do it, and of the two votes which were cast in the ballot box of Shri Dev Rao Kamble, the congress candidate for the reserved seat, there would have been one vote which would naturally have gone to the congress general seat candidate. If those votes are counted in favour of the petitioner, even then the petitioner gets much more votes than respondent No. 2. This confusion could have been avoided if the provisions of R. 28 and 46 were correctly understood by the returning Officers and the Presiding Officers, and the arrangements as stated above would have been made. It was also obligatory on the part of the Presiding Officers to clearly instruct the voters to put one ballot paper only in one box and the other ballot paper has to be put in another ballot box. The Presiding Officers and the Returning Officers have not instructed the voters in any one of the Polling Stations. This mismanagement on the part of the Returning Officer and the Presiding Officers has, therefore, materially affected the election results. The declaration of respondent No. 2's election, therefore, is invalid.

(iii) In case Rules 28 and 46 are interpreted to mean that no separate polling compartment is necessary for the general seat and the reserved seat or that the separate issuing of ballot papers one after the other is also unnecessary, then both the said provisions are repugnant not only to the provisions of the Representation of the People Act, 1951, but also contrary to the provisions of the constitution and are void and devoid of any legal consequence.

(iv) In any event, the result of the election has been materially affected by non-compliance of S.33(2) of the said Act.

14. The petitioner claims a declaration that he himself has been duly elected, because in fact he received majority of the valid votes for the general or non-reserved seat at the said election from the said constituency, and also due to the reasons stated above.

15. The petitioner has deposited Rs. 1,000/- as security in favour of the Secretary to the Election Commission and the receipt whereof is enclosed herewith.

16. It is, therefore, prayed: That this petition be referred to appropriate Election Tribunal for trial and for orders:

(a) declaring the election of the returned candidate Shri Hari Har Sonule, respondent No. 2, for the general seat to be void, and declaring the petitioner to have been duly elected to the House of the People from the Nanded Parliamentary Constituency for the General or non-reserved seat;

(b) for costs; and

(c) for any further or other reliefs or orders, as may seem fit and proper to the Election Tribunal.

Dated: 1st May, 1957.

Thumb impression of Sri Digambar Rao Bindu.

Petitioner.

I, Digambar Rao Bindu, do hereby declare that what has been stated in the above petition in paras 1 to 16 above is true to the best of my knowledge and belief.

Verified this 1st day of May, 1957, at Hyderabad.

Dated: 1st May, 1957.

Thumb ipmression of Sri Digambar Rao Bindu.

Petitioner.

As Mr. D. G. Bindu is sick and is unable to sign his thumb impression is affixed.

(Sd.) M.B.B.S.

[No. 82/444/57.]

By Order,

DIN DYAL, Under Secy.

